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INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of February 1, 1973

between

THE NORTHERN TRUST COMPANY,
as Trustee,

and

BURLINGTON NORTHERN INC.

INDEX

Lease

ARTICLE	PAGE
1. Delivery and Acceptance of Units	2
2. Rentals	2
3. Term of Lease	6
4. Identification Marks	7
5. Taxes	8
6. Payment for Casualty Occurrences and Obsolescence; Insurance	10
7. Annual Reports	16
8. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification ...	16
9. Default	19
10. Return of Units Upon Default	22
11. Assignment; Possession and Use	24
12. Return of Units upon Expiration of Term; Purchase and General Options	26
13. Opinion of Counsel	29
14. Federal Income Taxes	31
15. Recording; Expenses	38
16. Interest on Overdue Rentals	39
17. Notices	40
18. Severability; Effect and Modification of Lease ..	40
19. Execution	41
20. Law Governing	41

LEASE OF RAILROAD EQUIPMENT, dated as of February 1, 1973, between THE NORTHERN TRUST COMPANY and any successor trustee (hereinafter in its capacity as Trustee called the Lessor) as Trustee under a Trust Agreement dated as of February 1, 1973 (hereinafter called the Trust Agreement) with American Fletcher Leasing Corporation, an Illinois corporation, and with certain other equity investors (hereinafter called the Beneficiaries and individually a Beneficiary) and BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the Lessee).

WHEREAS, the Lessor has acquired or will acquire certain railroad equipment (the Hulks) from the Lessee pursuant to a Hulk Purchase Agreement dated as of February 1, 1973, between the Lessor and the Lessee;

WHEREAS, the Lessor has entered into a Reconstruction and Conditional Sale Agreement dated as of February 1, 1973 (hereinafter called the Reconstruction and Conditional Sale Agreement), with the Lessee and THE NORTHERN TRUST COMPANY (hereinafter in its capacity as Agent called the Vendor), as Agent under a Finance Agreement dated as of February 1, 1973 (hereinafter called the Finance Agreement);

WHEREAS, the Lessor desires to lease to the Lessee and the Lessee desires to lease from the Lessor the units of equipment to be constructed pursuant to the Reconstruction and Conditional Sale Agreement (such units described under Group A Units in Schedule A hereto being, after completion of such reconstruction, hereinafter called the Group A Units; such units described under Group B

Units in Schedule A hereto being, after completion of such reconstruction, hereinafter called the Group B Units; and the Group A Units and the Group B Units being hereinafter collectively called the Units), at the rentals and for the terms and upon the conditions hereinafter provided;

Now, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder or under the Reconstruction and Conditional Sale Agreement, subject to all the rights and remedies of the Vendor under such Reconstruction and Conditional Sale Agreement:

§ 1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be tendered to the Lessee at the point within the United States of America at which such Unit is delivered to the Lessor under the Reconstruction and Conditional Sale Agreement. Upon such tender, the Lessee will immediately cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance and delivery (hereinafter called the Certificate of Delivery), whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 2. *Rentals.* The Lessee agrees to pay to the Lessor (i) as rental for each Unit subject to this Lease three

interim rent payments, each payable on May 15 and November 15 in each year, commencing May 15, 1973 to and including May 15, 1974, (ii) as rental for each Group A Unit subject to this Lease 40 consecutive quarterannual payments and (iii) as rental for each Group B Unit subject to this Lease 60 consecutive quarterannual payments, each of the 40 and 60 consecutive quarterannual payments to be payable on February 15, May 15, August 15 and November 15 in each year, commencing August 15, 1974; *provided, however*, that if any of the payment dates referred to above is not a business day, the payment shall be payable on the next succeeding business day. The first such interim rent payment shall be in an amount equal to .03424% of the Purchase Price (as defined in the Reconstruction and Conditional Sale Agreement) of each Group A Unit and .02538% of the Purchase Price of each Group B Unit subject to the Lease for each day elapsed from and including the date each such Unit is delivered to and accepted by the Lessee to and including May 15, 1973; the second such interim rent payment shall be in an amount equal to the sum of (x) 6.1633% of the Purchase Price of each Group A Unit and 4.5674% of the Purchase Price of each Group B Unit subject to this Lease which shall have been so delivered to and accepted by the Lessee before May 15, 1973, plus (y) .03424% of the Purchase Price of each other Group A Unit and .02538% of the Purchase Price of each other Group B Unit subject to this Lease for each day elapsed from and including the date such Unit shall have been delivered to and accepted by the Lessee to and including November 15, 1973; the third such interim rent payment shall be in an amount equal to the sum of (x) 6.1633% of the Purchase Price of each Group A Unit and 4.5674% of the Purchase Price of each Group B Unit subject to this Lease which shall have been delivered to and accepted by the Lessee

on or before November 15, 1973, plus (y) .03424% of the Purchase Price of each other Group A Unit and .02538% of the Purchase Price of each other Group B Unit subject to this Lease for each day elapsed from and including the day such Unit shall have been delivered to and accepted by the Lessee to and including May 15, 1974. The 40 quarterannual payments for each Group A Unit subject to this Lease shall each be in an amount equal to (x) 3.0659% of the Purchase Price of each Group A Unit subject to this Lease and the 60 quarterannual payments for each Group B Unit subject to this Lease shall each be in an amount equal to (y) 2.2718% of the Purchase Price of each Group B Unit subject to this Lease.

In consideration of its rights hereunder, the Lessee also agrees to pay to the Lessor, as supplemental rental on each of said interim rental payment dates and on the Cut-Off Date (as defined in the Finance Agreement), the amount, if any, by which (x) such amounts as may be necessary to enable the Lessor to pay on each said interim rental payment date the amounts due and payable by the Lessor to the Vendor on such date pursuant to subclauses (a) and (b) of the fifth paragraph of Paragraph 3 of the Finance Agreement exceeds (y) the sum of (i) interest at the rate of $7\frac{1}{2}\%$ per annum with respect to 70% of the Purchase Price of each Group A Unit delivered to and accepted by the Lessee hereunder prior to said interim rental payment date from such date of acceptance by the Lessee to said interim payment date plus (ii) interest at the rate of $7\frac{3}{4}\%$ per annum with respect to 70% of the Purchase Price of each Group B Unit delivered to and accepted by the Lessee hereunder prior to said interim rental payment date from such date of acceptance by the Lessee to said interim payment date.

The Lessor irrevocably instructs the Lessee to make, and the Lessee agrees to make, all the payments provided for in this Lease (including but not limited to the payments

required under § 6 hereof) in immediately available funds in Chicago, Illinois for the account of the Lessor, care of the Vendor at its office at 50 South La Salle Street, Chicago, Illinois 60690, attention of Corporate Trust Department. Such payments shall be applied by the Vendor to satisfy the obligations of the Lessor under the Reconstruction and Conditional Sale Agreement accrued at the time such payments are due hereunder and, so long as no event of default (or event which, with notice or lapse of time, or both, could constitute an event of default) under the Reconstruction and Conditional Sale Agreement shall have occurred and be continuing, any balance shall be paid directly to the Lessor at its offices at 50 South La Salle Street, Chicago, Illinois 60690.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions, setoffs, counterclaims, recoupments, defenses or any other rights due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of failure of title of Lessor or any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, the Hulk Purchase Agreement or the Reconstruction and Conditional Sale Agreement or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the

Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same be terminated pursuant to the express provisions of this Lease.

§ 3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 6, 9 and 12 hereof, shall terminate on the date on which the final quarterannual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, or under the Reconstruction and Conditional Sale Agreement in its capacity as guarantor or otherwise, are subject to the rights of the Vendor under the Reconstruction and Conditional Sale Agreement. If an event of default should occur under the Reconstruction and Conditional Sale Agreement, the Vendor may, to the extent provided therein, terminate this Lease (or rescind its termination), unless the Lessee is not so in default under this Lease or under the Reconstruction and Conditional Sale Agreement (in its capacity as guarantor or otherwise). If a Declaration of Default (as defined in the Reconstruction and Conditional Sale Agreement) should be made under the Reconstruction and Conditional Sale Agreement due to an event of default which is occasioned by an act or omission of the Lessor hereunder or is attributable to the Lessor under the Reconstruction and Conditional Sale Agreement and which is not occasioned by an act or omission of the Lessee hereunder or thereunder and is not attributable to the Lessee under the Reconstruction and Conditional Sale Agreement as aforesaid, and if such Declaration of Default shall not have been rescinded by the Vendor within 30 days of the making thereof, or if the Vendor theretofore has indicated either in

writing to the Lessor or the Lessee or by the commencement of the remedies specified under Article 16 or the Reconstruction and Conditional Sale Agreement that it will not rescind such Declaration of Default, the Lessee, without penalty, may terminate this Lease.

§ 4. *Identification Marks.* The Lessee, so long as this Lease shall remain in effect, will cause each Unit to be kept numbered with the identifying number set forth in Schedule A to the Reconstruction and Conditional Sale Agreement and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the name of the Vendor followed by the words "as Agent for Security Owner and as Trustee for Beneficial Owner" or other appropriate words designated by the Vendor and the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor or the Vendor to such Unit and the rights of the Lessor under this Lease and of the Vendor and the Lessor under the Reconstruction and Conditional Sale Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and the Lessor by the Lessee and filed, recorded or deposited by the Lessee in all offices where this Lease will have been filed, recorded or deposited.

Except as above provided, the Lessee, so long as this Lease shall remain in effect, will not allow the name of

any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 5. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal or foreign taxes (other than any United States federal income tax [and, to the extent that the Lessor receives credit therefor against its United States federal income tax liability, any foreign income tax] payable by the Lessor in consequence of the receipt of payments provided herein and other than the aggregate of all franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or license fees and any charges, fines or penalties in connection therewith (hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Reconstruction and Conditional Sale Agreement, all of which impositions the Lessee assumes and agrees to pay on demand as supplemental rental in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly as supplemental rental all impositions which may be im-

posed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the advance opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Reconstruction and Conditional Sale Agreement. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of invoice therefor. Prior to making such payment, the Lessor shall promptly notify Lessee of the impositions charged or levied, and the Lessee shall have the opportunity to contest in good faith and by appropriate legal proceedings such impositions, at its sole expense.

In the event any reports with respect to impositions are required to be made on the basis of individual Units, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, any imposition accrues or becomes payable or is levied or assessed (or is attributable to the period of time during which this Lease is in existence) which the Lessee is or will be obligated to pay or reimburse, pursuant to this § 5, such liability shall continue, notwithstanding the expiration

of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 6. *Payment for Casualty Occurrences and Obsolescence; Insurance.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed or, in the reasonable opinion of the Lessee or the Vendor, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (each such occurrence being hereinafter called a Casualty Occurrence) during the term of this Lease or during the time when such Units are being stored by the Lessee for the Lessor pursuant to § 12 hereof, the Lessee shall, within eight days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully notify the Lessor and the Vendor in writing with respect thereto. On the rental payment date next succeeding such notice (or promptly if such Unit is being stored pursuant to § 12 hereof), the Lessee shall pay to the Lessor a sum equal to the rental payment, if any, that would have been payable for such Unit on the date of such payment but for such Casualty Occurrence plus a sum equal to the Stipulated Loss Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the payment by the Lessee to the Lessor of an amount equal to the rental payment, if any, due on said date of payment plus the Stipulated Loss Value (which amount shall include any insurance proceeds or net condemnation proceeds, as hereinafter provided) in respect of any Unit, the rental, if any, for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and the Lessor shall be entitled to recover possession of such Unit.

The Stipulated Loss Value of each Group A Unit and each Group B Unit as of any rental payment date shall be determined by multiplying the Purchase Price of such Unit by the applicable percentage set forth opposite each date in the following schedule.*

Rental Payment Date No.	Percentage of Purchase Price of Group A Unit	Percentage of Purchase Price of Group B Unit
Interim No. 1	101.9858	100.2523
Interim No. 2	101.9858	100.2523
Interim No. 3	101.9858	100.2523
1	101.9858	100.2523
2	101.5791	100.8672
3	101.0072	101.2983
4	100.4736	101.7102
5	99.9753	102.1025
6	99.5092	102.4749
7	98.6955	102.5612
8	97.8962	102.6267
9	97.1083	102.6711
10	96.3291	102.6940
11	95.2714	102.5009
12	94.2092	102.2855
13	89.8746	99.9392
14	88.7955	99.6777
15	87.4021	99.2126
16	85.9868	98.7232
17	84.5469	98.2093
18	83.0797	97.6702
19	81.2659	96.9592
20	79.4135	96.2220
21	73.1653	92.6471
22	71.2281	91.8563
23	68.9213	90.9326
24	66.5601	89.9808
25	64.1422	89.0002

*The Stipulated Loss Value of each Group A Unit and each Group B Unit delivered to and accepted by the Lessee hereunder but not yet settled for pursuant to the Reconstruction and Conditional Sale Agreement shall be 100% of the Purchase Price of each such Unit.

Rental Payment Date No.	Percentage of Purchase Price of Group A Unit	Percentage of Purchase Price of Group B Unit
26	61.6648	87.9904
27	58.7157	86.8598
28	55.6961	85.6987
29	50.4263	83.1012
30	47.4583	81.8775
31	44.9667	80.5142
32	42.4206	79.1180
33	39.8193	77.6883
34	37.1621	76.2245
35	34.4481	74.5439
36	31.6766	72.8278
37	28.8469	71.0756
38	25.9581	69.2865
39	23.0094	67.3398
40 (and thereafter)	20.0000	65.3548
41		63.3307
42		61.2668
43		59.1624
44		57.0166
45		54.3349
46		51.6102
47		48.8418
48		46.0286
49		43.1700
50		40.2649
51		37.3126
52		34.3121
53		31.2624
54		28.1626
55		25.7973
56		23.7117
57		21.5898
58		19.4310
59		17.2346
60 (and thereafter)		15.0000

Except as hereinabove in this § 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in an amount and against risks comparable to those insured against by the Lessee on equipment owned by it and the benefits thereof shall be payable as provided in the Reconstruction and Conditional Sale Agreement. Any net insurance proceeds as the result of insurance carried by the Lessee or net condemnation proceeds received by the Lessor in respect of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this § 6. If the Lessor shall receive any such net insurance proceeds or net condemnation proceeds after the Lessee shall have made payments pursuant to this § 6 without deduction for such net insurance proceeds or such net condemnation proceeds, the Lessor shall pay such proceeds to the Lessee up to an amount equal to the Stipulated Loss Value with respect to a Unit paid by the Lessee and any balance of such proceeds shall remain the property of the Lessor.

The Lessee shall have the right at its option after the May 15, 1978, rental payment date in respect of the Group A Units and the Group B Units, on at least 60 days' prior written notice to Lessor and the Vendor, to terminate this Lease on the rental payment date next succeeding such notice (the "termination date") with respect to any category of Group A Units or any category of Group B Units set

forth in Schedule A hereto, as the case may be, if, in the Lessee's reasonable opinion, they shall have become obsolete in the business of the Lessee because of governmental requirements or technological changes subsequent to the date of this Lease. During the period from the giving of such notice until the termination date, the Lessee, as agent for the Lessor, shall use its best efforts to obtain bids for the cash purchase of the obsolete categories of Group A Units or Group B Units, as the case may be, on the termination date. In the event it receives any bid, the Lessee shall, at least five business days prior to the proposed date of sale, certify to the Lessor and the Vendor in writing the amount and terms of such bid, the proposed date of such sale and the name and address of the party (who shall not be the Lessee or any person, firm or corporation affiliated with the Lessee) submitting such bid. On or before the termination date (1) the Lessee shall deliver the categories of Group A Units or Group B Units, as the case may be, to the bidder, if any, which shall have submitted the highest bid prior to such date, in the same manner as if delivery were made to the Lessor pursuant to § 12 hereof, and (2) the Lessor shall, without recourse or warranty, simultaneously therewith sell such categories of Group A Units or Group B Units, as the case may be, for cash to such bidder. The total selling price realized at such sale shall be paid to the Vendor for the account of the Lessor and applied as provided in the third paragraph of § 2 hereof and, in addition, on the termination date the Lessee shall pay to the Lessor the excess, if any, of (A) the Termination Value (as hereinafter defined) for categories of the Group A Units or Group B Units, as the case may be, computed as of such termination date over (B) the cash sale price received for the categories of Group A Units or Group B Units, as the case may be, sold by the Lessor after deducting the expenses incurred by the Lessor

in connection with such sale. Upon such payment the Lessor will transfer to the purchaser, without recourse or warranty, all of the Lessor's right, title and interest in and to such category of Group A Units or the Group B Units, as the case may be. If no sale shall have occurred on or as of the termination date in respect of such category of Group A Units or the Group B Units, as the case may be, this Lease shall continue in full force and effect as to such category of the respective Group A Units or Group B Units, as the case may be. The Lessor shall be under no duty to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise take any action in connection with any such sale other than to transfer to the purchaser named in the highest bid certified by the Lessee to Lessor, without recourse or warranty, all of the Lessor's right, title and interest in and to the respective category of Group A Units or Group B Units, as the case may be, against receipt of the payments provided for herein. The Termination Value of the category of Group A Units or the Group B Units, as the case may be, shall be the Stipulated Loss Value of such category of Group A or Group B Units, as of the termination date as provided in § 6 hereof plus the rental due and payable on such date. Notwithstanding the foregoing, on or before the termination date, the Lessor may at its option reject any bid obtained by the Lessee pursuant to the foregoing paragraph. If such bid is so rejected, the Lease with respect to such Units shall be terminated as of the termination date and the Lessee shall pay the rental with respect to such Units due on that date and the Lessor shall pay on the termination date an amount sufficient to pay to the Vendor the portion of the Conditional Sale Indebtedness (as such term is defined in the Reconstruction and Conditional Sale Agreement) then outstanding applicable to such Units (such amounts to be used to prepay the Conditional Sale Indebt-

edness then outstanding, all as provided in Article 6 of the Reconstruction and Conditional Sale Agreement) and any interest thereon due and payable to and including such termination date.

§ 7. *Annual Reports.* On or before March 31 in each year, commencing with the year 1974, the Lessee will cause to be furnished to the Lessor and the Vendor an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of the Units then leased hereunder and/or covered by the Reconstruction and Conditional Sale Agreement, the amount, description and number of all Units that may have suffered a Casualty Occurrence during the preceding twelve months (or since the date of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the markings required by § 4 hereof and Article 9 of the Reconstruction and Conditional Sale Agreement shall have been preserved or replaced. The Lessor shall have the right, by its authorized representatives, to inspect the Units and the Lessee's records with respect thereto, at such reasonable times as the Lessor may request during the continuance of this Lease.

§ 8. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification.* **The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness**

of the Units for any particular purpose or as to title to the Units or any component thereof, it being agreed that all such risks are to be borne by the Lessee. The Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee and the Lessor that all Units described in the Certificate of Delivery are in all the foregoing respects satisfactory to the Lessee and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects with all laws of the jurisdictions in which the Units may be operated, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units. In the event that such laws or rules require the alteration of the Units or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws and rules, the Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and the Lessee agrees at its own expense to use, maintain and operate such Unit in full compliance with such laws and rules so long as it is subject to this Lease; *provided, however*, that the Lessee, upon notice to the Vendor and the Lessor, may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor and the Vendor, adversely affect the property or rights of the Lessor or the Vendor hereunder or under the Reconstruction and Conditional Sale Agreement.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good order and repair.

Any and all additions to any Unit and any and all parts, equipment and appliances installed on or replacements made to any Unit shall be considered accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free of any lien, charge, security interest or encumbrance (except for those created by the Reconstruction and Conditional Sale Agreement) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Reconstruction and Conditional Sale Agreement or this Lease, the failure to comply with any laws of the jurisdictions in which the Units may be operated, with the interchange rules of the Association of American Railroads or with all lawful rules of the Department of Transportation or the Interstate Commerce Commission or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Hulks or reconstruction thereof or over the Units, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return or abandonment of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 9. *Default.* If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called Events of Default) shall occur:

A. the Lessee shall fail to pay in full any sum payable by the Lessee when payment thereof shall be due hereunder and such default shall continue for five days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions, warranties and agreements on the part of the Lessee contained herein or in the Reconstruction and Conditional Sale Agreement and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. any proceedings (other than proceedings under Section 77 of the Bankruptcy Act) shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the

Reconstruction and Conditional Sale Agreement), unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), and all the obligations of the Lessee under this Lease and under the Reconstruction and Conditional Sale Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceeding shall have been commenced, whichever shall be earlier; or

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Reconstruction and Conditional Sale Agreement and this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings (whether or not subject to ratification) in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment (whether or not subject to confirmation by the Interstate Commerce Commission), if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee: (1) as damages for loss of the bargain and not as a penalty the Stipulated Loss Value for each such Unit then subject to this Lease as of the rental payment date immediately preceding the occurrence of an Event of Default; *provided, however*, if the Lessor shall sell or lease such Units subsequent to payment by the Lessee pursuant to this clause (1), the Lessor shall pay to the Lessee 80% of the net proceeds from such sale or lease, *provided* that the amount so payable by the Lessor shall not exceed the Stipulated Loss Value received by the Lessor for each such Unit; and (2) all amounts, other than rentals, payable by the Lessee under §§ 6 or 9 or any other provision of this Lease and all damages and expenses, including reasonable attorneys' fees in addition thereto which the Lessor shall have sustained by reason of the breach of one or more of the representations, warranties and covenants (other than the covenant to pay rentals) made by the Lessee in

this Lease (and from time to time after the date of such termination the Lessor may recover from the Lessee any and all additional such amounts, damages and expenses which may be payable by the Lessee or incurred or sustained by the Lessor), *provided, however*, that damages payable under clause (1) of this paragraph shall be in lieu of all other damages in respect of rentals and the loss of tax benefits payable pursuant to this § 9(b).

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 10. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate,

B. permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor, and

C. transport the same to any place on the lines of railroad operated by it or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performances of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence (or to the extent otherwise provided by law) of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney-in-fact of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 11. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including but not limited to, the rights under §§ 5, 6, 9 and 14 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Beneficiaries and to the Lessor's assigns. Whenever the term Lessor is used in this Lease it shall include the Beneficiaries and any assignee and, where the context so requires (including but not limited to certain of the provisions in § 5 and § 9 and § 14 hereunder), shall refer only to the Beneficiaries or such assignee.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but the Lessee shall not assign, sublease or otherwise transfer its leasehold interest under this Lease in the Units or any of them without the prior written consent of the Lessor, which consent shall be given if the Lessor is reasonably satisfied that the assignee, transferee or sublessee is a financially responsible party which can be expected to comply with all of the Lessee's obligations hereunder, including, without limitation, the Lessee's obligations to repair and maintain the Units. In addition, the Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) which may at any time be imposed on or with respect to any Unit (including any accession thereto) or the interests of the Lessor, the Vendor or the Lessee therein. This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies,

in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the next succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use thereof upon its lines of railroad or upon the lines of any affiliate or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, and also to permit the use of the Units upon other railroads in the usual interchange of traffic, if customary at the time, but only upon and subject to all the terms and conditions of this Lease, including the last paragraph of this § 11, and the Reconstruction and Conditional Sale Agreement. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 11 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation (which shall have duly assumed the obligations of the Lessee hereunder and under the Reconstruction and Conditional Sale Agreement) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the railroad properties of the Lessee as an entirety or substantially as an entirety *provided* that such assignee or transferee will not, upon the effectiveness of such merger or consolidation, be in default under any provision of this Lease.

The Lessee agrees that during the term of this Lease, (i) it will not assign any Unit to service involving the regular operation and maintenance thereof outside the United States of America, and (ii) any use of any Unit outside the United States of America will be limited to incidental and temporary use in Mexico and Canada.

§ 12. *Return of Units upon Expiration of Term; Purchase and Renewal Options.* Immediately after the expiration of the term of this Lease with respect to the Group A Units and the Group B Units, respectively, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of the Group A Units or the Group B Units, as the case may be, to the Lessor upon such storage tracks of the Lessee as the Lessor may reasonably designate and permit the Lessor to store such Units on such tracks for a period not exceeding three months from the date such Units are delivered to the Lessor as hereinabove provided and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee as directed by the Lessor; the movement and storage of the Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence (or to the extent otherwise provided by law) of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application

to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; *provided, however*, that the foregoing clause shall not in any way relieve the Lessee of its obligations to make payments equal to the Stipulated Loss Value of any Unit experiencing a Casualty Occurrence pursuant to § 6 hereof.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee or its successors or assigns may elect, by written notice delivered to the Lessor not less than six months prior to the end of the term of this Lease (a) to extend the term of this Lease in respect of all but not fewer than all Group A or Group B Units, as the case may be, then covered by this Lease for a period of not less than the "Remaining Useful Life" of such Group A or Group B Units commencing on the scheduled expiration of the original term of this Lease at a rental equal to the "Fair Rental Value" of such Group A or Group B Units, payable in quarterannual payments on February 15, May 15, August 15 and November 15 in each

year of such extended term, or (b) to purchase all but not fewer than all the Group A Units or the Group B Units, as the case may be, then covered by this Lease at the end of the term of this Lease with respect to such Units for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession or (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

Fair Rental Value of any Units shall be the Fair Market Value of such Units divided by the number of quarterannual periods during the Remaining Useful Life of such Units plus interest thereon at the average of the prime commercial rates then in effect in New York City, N. Y. for Chase Manhattan Bank, N. A., Morgan Guaranty Trust Company and First National City Bank plus 2%.

If, on or before four months prior to the expiration of the applicable term of this Lease, the Lessor and the Lessee are unable to agree upon the determination of the Fair Market Value or the Remaining Useful Life of the Units, such Fair Market Value or such Remaining Useful Life shall be determined by a qualified independent Appraiser. The term Appraiser shall mean such independent Appraiser as the Lessor and the Lessee may mutually agree upon, or, failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two selected. The Appraiser shall be instructed to make such determination within a period of 30

days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

If this Lease is extended for any term subsequent to the original term hereof, all the provisions of this Lease shall apply during and until the expiration of such extended term, except that the rental shall be as provided in this § 12 and the Stipulated Loss Value of any Units then subject to this Lease shall equal the present value of the rentals over the renewal term discounted by a factor equal to the interest referred to in the fourth paragraph hereof.

§ 13. *Opinion of Counsel.* On each Closing Date (as defined in the Reconstruction and Conditional Sale Agreement), the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, to the effect that:

A. The Lessee is a duly organized and validly existing corporation in good standing under the laws of the State of Delaware and has the power and authority to own its properties and to carry on its business as now conducted;

B. The Finance Agreement, Reconstruction and Conditional Sale Agreement and this Lease have been duly authorized, executed and delivered by the Lessee and constitute valid, legal and binding agreements of the Lessee, enforceable in accordance with their terms;

C. Security title to the Units is validly vested in the Vendor, free of all claims, liens, security interests and other encumbrances except only the rights of the Lessor

under the Reconstruction and Conditional Sale Agreement, and the rights of the Lessor under this Lease;

D. The Reconstruction and Conditional Sale Agreement and this Lease have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and notice of such deposit given in *The Canada Gazette*, in accordance with said Section 86; and no other filing, deposit, or recordation is necessary for the protection of the rights of the Vendor and the Lessor thereunder or hereunder in any State of the United States of America or the District of Columbia or hereunder in Canada or any Province thereof;

E. No approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Finance Agreement, the Reconstruction and Conditional Sale Agreement or this Lease, or if any approval is necessary, it has been obtained;

F. There is no condition, restriction or requirement in the documents constituting the corporate charter of the Lessee relating to or affecting the execution and delivery by the Lessee of the Finance Agreement, the Hulk Purchase Agreement, the Reconstruction and Conditional Sale Agreement, or this Lease or the enforceability thereof or hereof in accordance with their terms or requiring any approval of stockholders in respect thereof or hereof;

G. The entering into and performance of the Finance Agreement, the Hulk Purchase Agreement, the Reconstruction and Conditional Sale Agreement or this Lease will not conflict with, or result in any breach of,

or constitute a default under, any terms, conditions or provisions of any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign or any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound;

H. No mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Hulks or the Units or in any manner affects or will affect adversely the Vendor's or the Lessor's right, title and interest therein; *provided, however*, that such liens may attach to the rights of the Lessee under this Lease in and to the Units; and

I. At the time of delivery of the Units by the Lessee under the Reconstruction and Conditional Sale Agreement, such Units were free of all claims, liens, security interests and other encumbrances of the Lessee or of anyone claiming through the Lessee.

§ 14. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such credits, deductions and other benefits as are provided to an owner of property by the Internal Revenue Code of 1954 (hereinafter called the Code), including without limitation those items of credit and deduction set forth below, and the Lessee agrees that it will not claim such items as credits or deductions on its federal income tax returns or take any positions therein which are inconsistent with the ownership of the Units by the Lessor:

(i) the investment credit (herein called the Investment Credit) which is or would be available to the Lessor pursuant to Section 38 and related sections of

the Code (as in effect on the date hereof) if it is assumed that the portion of the Purchase Price equal to the Reconstruction Cost (as defined in the Reconstruction and Conditional Sale Agreement) will qualify as "new section 38 property . . . placed in service by" the Lessor, having an "applicable percentage" of 100%, all within the meaning of Sections 46(c) and 48(b) of the Code, and will continue to constitute "section 38 property", within the meaning of Section 48(a) of the Code, at all times during the term of this Lease;

(ii) the depreciation deductions (herein called the Depreciation Deductions) which are or would be available to the Lessor under Section 167 of the Code (as in effect on the date hereof), the Regulations under Section 167 (as in effect on the date hereof), Proposed Regulations Section 1.167(a)-11 (as published in the Federal Register on January 27, 1972), and Rev. Proc. 72-10, 1972-8 I. R. B. 13, if it is assumed that the Units will at all times during the term of this Lease constitute "eligible property" within the meaning of Section 1.167(a)-11(b)(2) of said Proposed Regulations and that the Lessor will be entitled to take into account depreciation deductions (A) computed with respect to the portion of the Purchase Price equal to the Reconstruction Cost over the asset depreciation period of 11 years pursuant to the double declining balance method of depreciation for the first and second taxable years and the sum of the years' digits method of depreciation thereafter and (B) computed with respect to the portion of the Purchase Price equal to the Hulk Purchase Price (as defined in the Reconstruction and Conditional Sale Agreement) pursuant to the 150% declining balance method over the asset depreciation period of 11 years; in each case computing such deductions on the basis of the

"modified half year convention" established in Section 1.167(a)-11(c)(2)(ii) or the "half year convention" established in Section 1.167(a)-11(c)(2)(iii) of said Proposed Regulations, whichever is more favorable to the Lessor (as evidenced by the Lessor's election with respect to such conventions in its federal income tax returns), and computing such deductions to (but without taking into account) a salvage value of 20% reduced to 10% as to the Group A Units and a salvage value of 15% reduced to 5% as to the Group B Units both pursuant to Section 167(f) of the Code; and

(iii) the deduction (herein called the Interest Deduction) in each taxable year of the Lessor for all interest paid or accrued during such year on the Conditional Sale Indebtedness (as defined in the Reconstruction and Conditional Sale Agreement), computed in accordance with Section 163 of the Code.

If for any reason (including the inaccuracy in law or fact of the assumptions set forth above or the repeal, modification, amendment or other change of or to any law or any regulation issued thereunder or any other reason, whether similar or dissimilar to the foregoing, except as a direct result of the occurrence of any Excluded Event set forth below), the Lessor shall lose, or shall not have, or shall lose the rights to claim, or shall suffer a disallowance of or shall be required to recapture, all or any portion of the Investment Credit, the Depreciation Deductions, or the Interest Deduction (hereinafter each called a Benefit) with respect to all or part of any Unit, then the rental rate applicable to such Unit set forth in § 2 of this Lease shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such Benefit has not been claimed, or (if claimed and then disallowed or required to be recaptured) on and after the next succeeding rental date after payment of the tax attributable thereto, be increased by such amount for such Unit which, in the

reasonable opinion of the Lessor, will cause the Lessor's discounted after-tax rate of return in respect of such Unit under this Lease to equal the discounted after-tax rate of return in respect of such Unit under this Lease that would have been available if the Lessor had been entitled to utilization of all or such portion of the Benefit which was not claimed or was disallowed or required to be recaptured, and the Lessee shall forthwith pay to the Lessor the amount of any interest which may be paid to the United States by the Lessor attributable to the disallowance, recapture or loss of all or any portion of the Benefit; *provided, however*, that such rental rate shall not be so increased to the extent (and only to the extent) that the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or shall have suffered a disallowance of, or shall have been required to recapture all or any portion of any Benefit with respect to all or part of such Unit as a direct result of the occurrence of any of the following events ("Excluded Events"):

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under § 6 hereof;

(ii) a voluntary transfer or other voluntary disposition by the Lessor of any interest in such Unit (except the transfer or disposition contemplated by the Transfer Agreement) or the voluntary reduction by the Lessor of its interest in the rentals from such Unit under the Lease, unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the amendment either of the Hulk Purchase Agreement, the Transfer Agreement or the Reconstruction and Conditional Sale Agreement without the prior written consent of the Lessee;

(iv) the failure of the Lessor to claim the Investment Credit, the Depreciation Deductions or the Interest Deduction, as applicable, in its federal income tax return for the appropriate year, unless the failure to claim any such Benefit is based on an opinion of its independent tax counsel or independent certified public accountants that such Benefit may not reasonably be claimed, or the failure of the Lessor to follow proper procedure in claiming any Benefit (but for this purpose any procedure approved in writing by the Lessee or not objected to in writing by the Lessee within 30 days after written notice from the Lessor shall in any event be deemed a proper procedure); or

(v) the failure of the Lessor to have sufficient liability for tax against which to credit such Investment Credit or sufficient income to benefit from the Depreciation Deductions or the Interest Deduction, as applicable.

The Lessor agrees that if, in the opinion of its independent tax counsel (herein referred to as Counsel), a bona fide claim to all or a portion of any Benefit (with respect to part or all of any Unit) exists in respect of which the Lessee is required to pay increased rental and interest as aforesaid to the Lessor as above provided, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by Counsel in order to sustain such claim. The Lessor may, at its option, take such action prior to making payment pursuant to a notice of disallowance or may make such payment and then sue for a refund. In the latter event, if the final determination shall be adverse to the Lessor, the Lessee shall pay to the Lessor interest on the amount of the tax and interest paid attributable to the Benefit disallowed, required to be recaptured or lost, which interest shall be computed at the rate of $7\frac{3}{4}\%$ per annum from the date of payment of

§ 17. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

if to the Lessor, at 50 South La Salle Street, Chicago, Illinois 60690; attention Corporate Trust Department (with a copy to each of American Fletcher Leasing Corporation, 100 South Wacker Drive, Chicago, Illinois 60606, Attention: Ramiro Collazo; American Security and Trust Company, 15th Street and Pennsylvania Avenue, N.W., Washington, D. C. 20013, Attention: Charles E. Lewis, Vice President; and American National Bank and Trust Company, 33 North La Salle Street, Chicago, Illinois 60602, Attention: William Gastineau, Vice President);

if to the Lessee, at 176 East Fifth Street, St. Paul, Minnesota 55101;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 18. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

§ 19. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of February 1, 1973, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 20. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Minnesota; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

THE NORTHERN TRUST COMPANY,
as Trustee under a Trust Agree-
ment dated as of February 1, 1973,

by

Charles J. Hays
Vice President.

[CORPORATE SEAL]

Attest:

W. J. H. Hays
.....
Secretary.

BURLINGTON NORTHERN INC.,

by *Frank H. Coyne*
Vice President.

[CORPORATE SEAL]

Attest:

.....*[Signature]*.....
Secretary.

STATE OF ILLINOIS }
COUNTY OF COOK } SS.:

On this 13 day of March, 1973, before me personally appeared Charles A. Cory II, to me personally known, who, being by me duly sworn, says he is a Vice President of THE NORTHERN TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said trust company, that said instrument was this day signed and sealed on behalf of said trust company by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said trust company.

Frank A. Hoffman
.....
Notary Public

[NOTARIAL SEAL]

My Commission Expires

My Commission Expires November 25, 1976

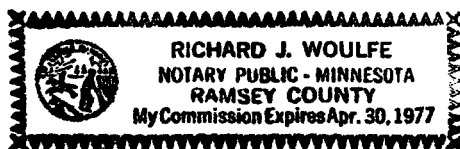
STATE OF MINNESOTA }
COUNTY OF RAMSEY } SS.:

On this 11 day of MARCH, 1973, before me personally appeared FRANK H. COYNE, to me personally known who, being by me duly sworn, says that he is a Vice President of BURLINGTON NORTHERN INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that such instrument was this day signed and sealed on behalf of said corporation by authority of its President and Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Richard J. Woulfe
.....
Notary Public

[NOTARIAL SEAL]

My Commission Expires



SCHEDULE A**Group A Equipment**

<u>Quantity</u>	<u>Category and Description of Equipment</u>	<u>Lessee's Road Numbers (both inclusive)</u>	<u>Unit Purchase Price</u>	<u>Aggregate Purchase Price</u>
400	70 Ton Hopper Cars	516750 to 517149	\$ 9,104	\$3,641,600
200	70 Ton Covered Hopper Cars	436000 to 436199	7,932	1,586,400
100	Flat Cars	615750 to 615849	11,774	1,177,400

Group B Equipment

60	50' Box Cars	232140 to 232199	11,825	709,500
200	Airslide Cars	401250 to 401449	10,187	2,037,400
960			<u>\$5,961,820</u>	<u>\$9,152,300</u>

